

SENATE BILL REPORT

SB 6525

As Passed Senate, February 11, 2008

Title: An act relating to the drug offender sentencing alternative.

Brief Description: Concerning the drug offender sentencing alternative.

Sponsors: Senators Kline, McCaslin, Tom, Weinstein and Swecker; by request of Department of Corrections.

Brief History:

Committee Activity: Judiciary: 1/22/08 [DP].

Passed Senate: 2/11/08, 47-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, McDermott, Roach and Weinstein.

Staff: Robert Kay (786-7405)

Background: Effective July 25, 1999, some criminal offenders convicted of a Violation of the Uniform Controlled Substances Act (or certain other offenses where the offender was addicted to controlled substances) became eligible for an alternative sentence under the Sentencing Reform Act: the Drug Offender Sentencing Alternative (DOSA). The intent of the Legislature in creating the DOSA was to increase the use of well-planned and adequately-monitored substance abuse treatment for drug offenders in Washington, with the goal of reducing recidivism and increasing the likelihood that drug offenders will become law-abiding persons. The intended fiscal effect was a conservation of state and local resources that would otherwise be expended in the repeated incarceration of drug-addicted offenders.

Since the creation of the DOSA – with the exception of certain cases since 2006 noted below – the length of a DOSA sentence involving incarceration has been computed by determining the standard range for the drug or drug-related offense committed, finding the midpoint of that standard range, and then dividing the midpoint of the standard range into two parts of equal length. The offender must serve the first half of the midpoint in custody, and must successfully complete a prison-based drug treatment program. The offender must then serve the second half of the midpoint on community custody, during which time the offender must successfully complete additional drug treatment.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In certain cases, one-half the midpoint of the standard range can be less than 12 months. However, the DOSA statute was amended during the 2006 Legislative Session to require offenders sentenced under that alternative to complete at least 12 months in total confinement. The statute now provides that offenders receiving DOSA sentences are required to serve a term of confinement in a Department of Corrections (DOC) facility equal to one-half of the midpoint of the standard range or 12 months, whichever is longer. Following confinement, subsection (5)(b) of the statute states that the offender is required to spend "the remainder" of the midpoint under community custody, DOC's supervision in the community.

One group of judges interprets subsection (5)(b) to mean that in cases where one-half of the midpoint of the range is less than one year, the term of community custody, "the remainder" of the midpoint, is reduced by the number of months necessary to bring the confinement time to the 12-month minimum. A second group of judges interprets subsection (5)(b) such that confinement time above and beyond the one-half of the midpoint, in order to reach the 12-month minimum, has no impact on the subsequent term of community custody. This second group reads the statute as requiring community custody for a term of one-half of the midpoint regardless of the time spent in total confinement.

In order to resolve this split in interpretation of subsection (5)(b), DOC organized a work group. The work group reached a consensus that the language of subsection (5)(b) regarding "[t]he remainder" of the midpoint of the standard range should be interpreted always to mean "[o]ne-half" of the midpoint of the standard range.

Summary of Bill: In all cases where a DOSA is ordered, the term of community custody is one-half the midpoint of the standard range for the offense.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The following is an example of what can occur, in a case where the midpoint is less than 24 months and where a sentencing judge interprets the "the remainder" language of subsection (5)(b) of the DOSA statute to mean that the term of community custody is to be the midpoint minus the 12-month minimum: Say the midpoint is 12 months. Under this interpretation of the DOSA statute, the judge would order that the term of community custody be the remainder of the midpoint of 12 months, minus the 12-month minimum, or 0 months, leaving no community custody. Without a community custody period, there can be no monitored drug treatment after the offender is released from prison. The Department of Corrections has thus been unable to provide and monitor sufficient drug treatment to offenders upon their release from prison in some cases where the midpoint is less than 24 months. The intent of the Legislature, in passing the DOSA statute, was to increase the use by DOC of effective and monitored drug treatment. The Legislature should amend subsection (5)(b) of the DOSA statute, replacing the words "[t]he remainder" with "[o]ne-half" so as to ensure that the term of DOSA community custody is not less than one-half of the midpoint of the standard range for the relevant offense.

Persons Testifying: PRO: Ida R. Leggett, Department of Corrections.